

EFFECTIVE REGULATION WORLDWIDE: HELPING NGOS FLOURISH

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Heightened concern for effective worldwide regulation of non-governmental not-for-profit organisations (NGOs) brought the Charity Commission for England and Wales into the field of international work². Established over 150 years ago, the Charity Commission is an internationally renowned model for effective NGO regulation and, on an ad hoc basis, has provided advice to overseas regulatory bodies for a number of years. Supported by the UK Foreign and Commonwealth Office (FCO)³, the Charity Commission is now formally engaging in international work. It is running a two-year programme to aid the development of the best possible regulation of NGOs across the world in order to build their capacity, increase their effectiveness and boost public confidence and trust in them.

A number of different factors are stimulating international interest in improving NGO regulation. Competition for funding by NGOs, matched by an increasing donor awareness that the organisational strength of their grantees is important to aid delivery, has encouraged a trend towards transparency, accountability and self-regulation in NGOs. Ongoing global initiatives to promote good governance and to build the capacity of governments and civil society more generally are assisting the trend. As NGOs become more and more visible – an extreme example being the Indian Ocean tsunami disaster on 26 December 2004 and the

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² The Charity Commission set up its International Programme in 2004. The Director of the Programme is James Shaw-Hamilton who reports to Kenneth Dibble, Director of Legal Services.

³ The programme is wholly funded by the FCO's Global Opportunity Fund separately from the funding of the Charity Commission's operational budget by HM Treasury.

huge influx of aid that followed it – these interrelated factors are becoming increasingly influential. Recognition of the need for universal standards is also playing a part: as NGOs are increasingly criticising lack of governmental and intergovernmental transparency, they are recognising the need to demonstrate and champion such qualities themselves.

Interest in improving NGO regulation has also developed because the international community has become concerned at the possibility that NGOs are vulnerable to misuse by terrorists, particularly as a mechanism for terrorist financing. Following the attack on the New York World Trade Center buildings on 11th September 2001, the issue captured the attention of the OECD's Financial Action Task Force (FATF)⁴, the Group of Seven (G7), the United Nations⁵ and the European Union⁶, as well as national authorities in many regions. Over the last few years the FATF has been mapping the vulnerability of NGOs to terrorist misuse and developing typologies and standards to address those risks. Its 2002 International Best Practices paper⁷ for combating abuse of the sector emphasises transparency and accountability as ways in which terrorist misuse can be minimised. FATF-style regional bodies and other multilateral

4 See the FATF website at www.fatf-gafi.org. The FATF was established by the G7 countries in 1989 and its members now include 30 countries, 1 territory (Hong Kong) and 2 organisations (the European Commission and the Gulf Cooperation Council). The FATF adopted Nine Special Recommendations on Terrorist Financing on 30 October 2001. Special Recommendation VIII concerns the abuse of non-profit organisations. In October 2001 the FATF initiated a self-assessment exercise to determine the extent of states' compliance with the Special Recommendations. The exercise was initially confined to FATF members but in February 2002 the FATF called on non-members to participate. Compliance with the Special Recommendations is not mandatory, but in practice most states are reviewing the extent to which their laws implement the Recommendations.

5 See Second Report of the Monitoring Group to the Security Council Committee established pursuant to Resolution No. 1267 (1999), 1 December 2003, www.un.org/Docs/sc/committees/1267Template.htm .

6 The European Union is considering whether a response at EU level is required. The European Commission has been asked to assess the need for measures at the EU level in addition to those taken at national level, in particular with regard to the transparency of the non-profit sector, and to report to the European Council by the end of 2005 (see "The fight against terrorist financing", Note to the European Council from the Secretary-General/High Representative and the Commission, Doc. 16089/04, 14 December 2004).

7 "Combating the abuse of non-profit organisations: International Best Practices", FATF, 11 October 2002. The paper provides guidance to countries seeking to implement Special Recommendation VIII. For this purpose the FATF has adopted a functional, rather than a legalistic, definition of non-profit organisations. The objective is to develop practices that would best aid authorities to protect non-profit organisations *that engage in raising or distributing funds* for charitable, religious, cultural, social or fraternal purposes, or for the carrying out of other types of "good works" from being misused or exploited by the financiers of terrorism.

organisations promote these recommendations across the world. While there is no evidence to suggest that misuse of NGOs for terrorist purposes is by any means widespread, the international community is concerned that patchy regulation of NGOs across the world exposes the sector as a whole to risk of misuse.

This must, of course, be balanced by the recognition that the sector has an enormously valuable contribution to make worldwide (and this is acknowledged by the International Best Practices paper). As Simon Zadek of AccountAbility writes in a wider context:

“adequate NGO accountability must emerge from vision about, not fear for, the future of civil society”⁸.

So, for a variety of reasons, governments and NGO sectors in countries around the world are under increasing pressure to improve regulation. It is a huge challenge to map a country’s NGO sector, introduce or implement effective legislation, establish and maintain neutral and effective regulatory systems, communicate effectively with the sector and ensure co-ordinated regulation at state and federal level. Even where governments have the resources and will to act, the scale of the task is enormous.

A variety of challenges need to be borne in mind as governments and the international community ponder improvements to NGO regulation around the world. Not least amongst these is the enormous diversity that exists – of NGO sectors, legal systems and ideas of development.

Another challenge is that regulators⁹ will not be wholly effective and gain the confidence of the NGO sector unless they are impartial and transparent in their decision-making processes. Personal and political influence can thus be a serious obstacle to development, but neither the perception nor reality of such influence is easy to overcome where it is entrenched in systems and where regulators remain dependent on government funding and other services. A two-way commitment to transparency would be encouraged if governments worked with NGOs to develop standards and consulted the sector on developments in regulation.

⁸ “In defence of non-profit accountability”, Simon Zadek, Ethical Corporation Magazine, September 2003.

⁹ Few countries have a regulatory body that is similar to the Charity Commission. In most cases the regulator is the relevant ministry designated with responsibility for NGO supervision.

The orientation of regulatory authorities poses another challenge for effective regulation. The need to work with NGOs in the delivery of development plans causes a serious conflict of interest for some regulators. It is clearly difficult to bring an NGO to task when discrepancies are found if to do so compromises an essential project that the regulator is committed to support and which is an integral part of the regulator's annual planning targets or of another more senior ministry.

Apprehension about exposing problems in the sector relates to donor confidence as well. Fear that discovery of any abuse of NGOs would choke off foreign donations to their country makes some regulators reluctant to be more robust and use their powers to address concerns. This can of course lead to a regulatory backlash in some donor countries.

Another apprehension is the low level of political authority wielded by some regulators, which can also make it difficult for them to address concerns. Some regulators feel unable to challenge NGOs because they are perceived to be better resourced and more politically influential than the regulators. Taking the path of least resistance whilst ensuring development targets are met is sometimes regarded as the only realistic course of action.

As touched on above, resource constraints are of course also a key problem. Regulatory bodies often need more staff and more sufficiently trained staff (for example in IT or accounts) to cope with the task of reviewing submitted reports or investigating concerns raised about organisations. Generally, insufficient IT hardware and software, particularly of networked IT systems, makes it difficult for many regulators to aggregate or interrogate data in any meaningful way.

The challenges highlighted are not impossible to overcome – especially in light of good governance initiatives underway. NGO sectors are playing a key role in assisting governments to achieve the United Nations' Millennium Development Goals. The international community needs to convey the message that overseas donors will be more confident in giving when effective NGO regulatory systems are in place.

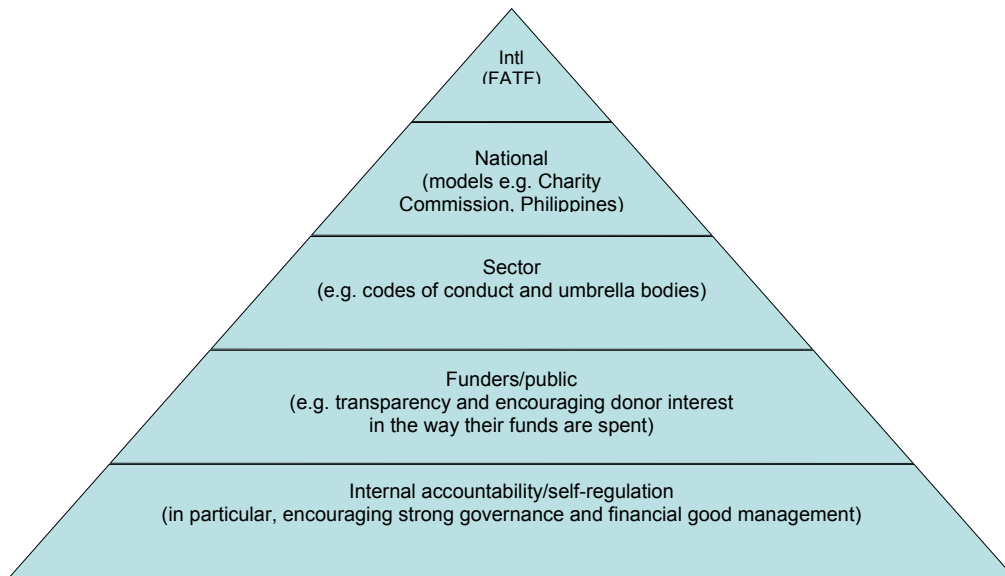
When thinking about standards for regulation and undertaking technical assistance work, the international community needs to consider the situation in less developed countries and to recognise different social and historical contexts. The Charity Commission's International Programme is an example of what can be done to enhance NGO regulation across the world working with existing regulatory systems.

The Charity Commission's International Programme team are visiting countries and providing bespoke advice¹⁰ to help them put some crucial "first step" regulatory building blocks in place. The team can then provide guidance on strengthening any areas of weakness in systems. Financial assistance and further specialist training may be necessary for many countries, but the team recognise that a lot can be done to enhance systems using the limited resources available. A paper-based system can work if regulators maintain an accurate register of NGOs and introduce a risk-based approach to regulation requirements and monitoring arrangements, such as sampling reports to review in more detail. Recognising the value of enabling countries to come together to share experience of NGO regulation and ideas for best practice, the team are organising seminars for NGO regulators in South/South East Asia, the Middle East/North Africa and sub-Saharan Africa¹¹.

The International Programme is promoting the Charity Commission's broad approach of providing an enabling environment that allows the NGO sector to operate confidently while acting as a regulatory safety net to prevent any serious misuse of NGOs. This approach to NGO regulation recognises and supports the contribution of many different elements: self regulation (at the organisational and sectoral levels), funding requirements, public awareness and support for good practice, the role of various regulatory bodies themselves and, finally the actions of the international community. Each of these elements relies on the other. "The Regulatory Pyramid" (below) conveys the inter-relationship between them and, arguably, starting from the foundation of internal accountability, their decreasing practical importance in protecting NGOs from misuse.

¹⁰ The International Programme provides comments on existing laws and proposed new legislation. Its staff are not engaged in drafting new laws, but will assist countries to approach organisations and consultants which can provide necessary support and funding.

¹¹ The Charity Commission approaches individual countries on the recommendation of the FCO. Priority is given to countries where terrorism poses a threat. Participation in the International Programme is entirely voluntary and the Charity Commission only visits a country in response to an invitation to do so.



The Commission's International Programme is advising governments how to mobilise and draw on the potential strengths of each of these levels and spread the "burden" of regulation. In order to start working collaboratively with the NGO sector to improve standards, regulatory bodies need to find ways to engage positively with them, become the advocate and enabler of the sector and provide real incentives for the spread of good practice among NGOs – such as tax breaks and access to funding. Some governments will need to work hard to prove to their NGOs that they genuinely value the sector and want to see it flourish. Funders and the general public can be a huge asset in the fight against NGO misuse, but this potential needs to be mobilised by effective "NGO good practice" awareness-raising campaigns, alongside a government (and NGO) commitment to making information publicly available.

Massive worldwide social, political and economic benefits are the ultimate rewards of improving NGO regulation across the world. Strong NGO sectors fill critical infrastructure gaps in countries. They support the provision of basic urban services such as transportation, water, sewage, sanitation and housing. They tackle social problems that governments cannot solve and address economic needs which private sectors cannot meet. Besides taking on tasks such as education, healthcare and more generally helping disadvantaged parts of society, NGOs play a fundamental role in assisting the development of countries. They promote employment and professional training, contribute to policy formation, safeguard rights, articulate interests, and promote transparency and efficiency in governments and administrations.

Kofi Annan recognised that

“...peace and prosperity cannot be achieved without partnerships involving governments, international organisations, the business community, and civil society”¹².

As progress towards achievement of the United Nations’ Millennium Development Goals is reviewed, the value of better regulated, and thus more efficient and effective NGO sectors cannot be overestimated. Improving regulation of NGOs across the world is a huge challenge, but it’s worth tackling.

¹² Speech at the World Economic Forum held at Davos, Switzerland on 31 January 1998.